

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHARLES V. MCCLAIN III,

Plaintiff,

v.

1ST SECURITY BANK OF WASHINGTON et  
al.,

Defendants.

Case No. 2:13-cv-02277-RSM

ORDER DENYING MOTION FOR  
RECONSIDERATION AND MOTION  
FOR DEFAULT

This matter comes before the Court upon pro se Plaintiff's Motion for Reconsideration of the Court's Order Denying Motion for Default Judgment (Dkt. # 12) as well as Plaintiff's renewed Motion for Order of Default and Default Judgment (Dkt. # 14). For the reasons that follow, the Court denies both motions.

On January 10, 2014, Plaintiff filed a motion for default judgment against all Defendants along with a certificate of service. Dkt. # 9. On the same day and immediately prior to the filing of Plaintiff's motion, counsel filed a notice of appearance for all Defendants in this action. Dkt. # 8. Accordingly, the Court entered an Order denying default as Plaintiff's motion failed to comply with Local Rule 55(a). *See* Local Rule W.D. Wash. CR 55(a) (requiring that, where a defaulting party has entered an appearance, the moving party must give the defaulting party written notice of the intention to move for entry of default at least fourteen days prior to filing its motion).

1  
2 Plaintiff now moves the Court to reconsider its Order denying default upon his information and  
3 belief that his motion for default was filed prior to Defendants' notice of appearance. *See* Dkt. #  
4 12, pp. 1-2. Plaintiff also renews his motion for default as over fourteen days have lapsed since  
5 Defendants were notified of his intent to file a default judgment through service of his original  
6 motion. *See* Dkt. # 14, ¶¶ 14, 15.

7 Federal Rule of Civil Procedure 55(a) provides that "[w]hen a party against whom a  
8 judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure  
9 is shown by affidavit or otherwise, the clerk must enter the party's default." The Local Rules of  
10 this district require that default may only be entered against a party when supported by an  
11 affidavit "specifically showing that the defaulting party was served in a manner authorized by  
12 Fed. R. Civ. P. 4." Local Rules W. D. Wash. LCR 55(a). To comply with Federal Rule of Civil  
13 Procedure 4, a plaintiff must serve all defendants with a summons that is both signed by the clerk  
14 and bears the Court's seal. Fed. R. Civ. P. 4(a)(1)(F),(G); Fed. R. Civ. P. 4(b), (c). *See also*,  
15 Local Rules W. D. Wash. LCR 4(a) ("It is the obligation of a party seeking the issuance of a  
16 summons by the clerk to present the summons to the clerk in the proper form, prepared for  
17 issuance, with sufficient copies for service. Forms of summons may be obtained by the clerk.").  
18 A motion for default cannot be entertained if the record does not substantiate that defendants  
19 against whom default is sought were properly served with a court-issued summons and copy of  
20 the complaint.

21 Plaintiff's Motions for Default both rely on an affidavit of service and copy of summons  
22 attached as an exhibit to his first Motion. *See* Dkt. # 9, Ex. 1, 2. This summons does not bear the  
23 clerk's signature or the Court's seal, and there is no record in this case of a summons having  
24 been issued by this Court. As Plaintiff has not demonstrated by affidavit or otherwise that he has  
25 complied with Federal Rule of Civil Procedure 4, without which no Defendant is required to  
26 appear or defend, the Court is unable to grant the requested relief.

1  
2 For the reasons stated herein, it is hereby ORDERED that Plaintiff's second Motion for  
3 Default (Dkt. # 14) and Motion for Reconsideration of the Court's Order Denying Default (Dkt.  
4 # 12) are DENIED. Plaintiff is instructed to perfect service within 120 days of the filing of his  
5 complaint. *See* Fed. R. Civ. P. 4(m).

6 DATED February 4, 2014.

7  
8 

9 RICARDO S. MARTINEZ  
10 UNITED STATES DISTRICT JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26